

IN THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT IN
AND FOR MONROE COUNTY,
FLORA

CASE NO: 22-CA-322

KRISTOPHER NEUZIL,

Petitioner,

vs.

STATE OF FLORA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES

Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on Petitioner's Amended Petition for Writ of Certiorari, filed on September 21, 2022. Petitioner seeks certiorari review of Respondent's final order suspending his driving privilege for refusal to submit to a breath, blood, or urine test under section 322.2615, F.S.. This Court has jurisdiction pursuant to Article V, section 5(b), Florida Constitution, Fla. R. App. P. 9.030(c), sections 322.2615(13) and 322.31, F.S.. This Court reviewed the Petition, Appendix, and the Response to Petition for Writ of Certiorari and heard argument on the matter. Based upon review of this matter this Court finds as follows:

Factual Background and Procedural History:

On May 29, 2022, Deputy Hanna of the Monroe County Sheriff Office was conducting a patrol in Islamorada, Florida when he was stopped by a manager at Woody's, asking for assistance in removing an intoxicated customer. Deputy Hanna approached the man, later identified as Petitioner, ordering him to leave the property, after which Petitioner became argumentative. While standing near Petitioner, Deputy Hanna smelled the strong odor

of alcohol coming from his person. Petitioner accused the staff at Woody's of stealing his vehicle until Deputy Hanna pointed out it was still in the parking lot. Despite Deputy Hanna informing Petitioner he was in no condition to drive and offering a ride, Petitioner informed Deputy Hanna he was going to drive. Petitioner got into his vehicle, started the engine, looked at Deputy Hanna and smiled, then placed the vehicle into reverse.

Deputy Hanna removed Petitioner from the driver's seat. Another Deputy arrived on the scene and Petitioner became aggressive, refusing to comply with Deputy Hanna's verbal directions. Consequently, Petitioner was placed in hand restraints. Deputy Hanna asked Petitioner to participate in field sobriety exercises and he refused. Based on Deputy Hanna's observations he arrested Petitioner for DUI. Deputy Hanna took Petitioner to the Plantation Key DUI Room, where he began the 20-minute observation period at 4:13 a.m. After the initiation of the observation period, Deputy Hanna asked Petitioner if he would consent to a breath test, which Petitioner refused. Deputy Hanna then read implied consent, and Petitioner again refused to provide a breath sample. As a consequence of his arrest for DUI, and refusal of the breath test, the Department suspended Petitioner's driving privilege.

Petitioner requested a formal administrative hearing with the Bureau of Administrative Reviews, to challenge the suspension of his driving privilege, which took place on August 2, 2022. The hearing officer determined by a preponderance of the evidence that sufficient cause existed to sustain Petitioner's DL suspension. The Department informed the Petitioner in an Order dated August 10, 2022, that the suspension of his driving privilege had been sustained. Petitioner then filed a Writ of Certiorari in this Court, arguing the evidence presented at the hearing was not sufficient to uphold the suspension due to conflicts in the documents reviewed and misconduct by the police in not preventing Petitioner from driving his vehicle.

Standard of Review:

A circuit court's review of an administrative agency decision is limited to the following three-part standard of review: (1) whether procedural due process was accorded, (2) whether the

essential requirements of law were observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a] (citing *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982)). When exercising certiorari review, the court is not permitted to reweigh the evidence or substitute its judgment for that of the agency. See *Department of Highway Safety and Motor Vehicles v. Trimble*, 821 So.2d 1084, 1085 (Fla. 1st DCA 2002).

Analysis:

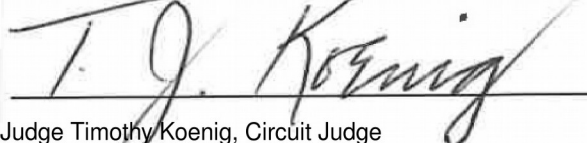
This court finds there was competent substantial evidence to support the hearing officer's determination. Petitioner argues the Probable cause affidavit (PCA) conflicts with other documents, but the narrative in the affidavit is clear that Petitioner was placed under arrest at 04:00 the morning of May 29, 2022, transported to the Plantation Key Police Department DUI Room, and placed under observation beginning at 04:13. Shortly thereafter, at 04:15, Petitioner refused to submit to the breath test.

While the PCA uses the language "placed in custody," the context of the narrative reflects a custodial arrest rather than a mere detention. The deputy had observed facts giving rise to reasonable suspicion of driving under the influence, requested the Petitioner complete field sobriety exercises (Petitioner refused to attempt the exercises), and took him into custody. Petitioner was under arrest at that time.

Petitioner also argues Deputy Hanna had a duty to prevent him from reaching his vehicle and that Deputy Hanna had the ability to arrest him for other violations of law. While Deputy Hanna may have had other grounds to arrest Petitioner prior, there is no legal duty to do so and a law enforcement officer may use discretion in determining when to affect an arrest.

ACCORDINGLY, it is hereby **ORDERED** and **ADJUDGED** that Petitioner's Petition for Writ of Certiorari is **DENIED**.

DONE and **ORDERED** in Monroe County, Florida, Tuesday, March 21, 2023

A handwritten signature in black ink, appearing to read "T. J. Koenig", is written over a horizontal line. The signature is fluid and cursive.

Judge Timothy Koenig, Circuit Judge
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